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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/764,617 | 01/16/2001 | Gene A. Bornzin | A01P1002 | 7875 |
| 36802 | 7590 | 11/10/2004 | EXAMINER | |
| PACESETTER, INC. 15900 VALLEY VIEW COURT SYLMAR, CA 91392-9221 | | | OROPEZA, FRANCES P | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3762 | |

DATE MAILED: 11/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/764,617

Applicant(s)

BORNZIN et al

Examiner

Frances P. Oropeza

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3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-19 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-19 and 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Applicant amended the independent claims to overcome the rejection of record, hence the rejection of record is withdrawn and a new rejection established in the subsequent paragraphs.

Claim Rejections - 35 USC § 103

2. Claims 1-9, 13-20 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mann et al. (US 5833623) in view of Powell (US 5549654).

Mann et al. disclose a system for facilitating rapid retrieval of atrial and ventricular capture test data, providing a visual representation of the presence and absence of captured cardiac events (figure 1; col. 3 @ 7-14; col. 7 @ 50-52 & 58-66; col. 9 @ 20-24; col. 8 @ 12-24 & 31-36; col. 8 @ 65 – col. 9 @ 2; col. 10 @ 60-63; col. 13 @ 62 – col. 14 @ 9; Table 1 – Vent Capture, Atrial Capture, Loss of Capture).

As to an electrocardiogram, the patient's electrocardiogram (IECG or ECG) is shown on the display with appropriate markers representative of capture (figure 2 – 202; col. 8 @ 65 – col. 9 @ 2; col. 13 @ 62 – col. 14 @ 5)

As discussed in the previous paragraph of this action, Mann et al. disclose the claimed invention except for the visual representations/ markers being text markers.

Powell teach visual marking for a display means using text markers for the purpose of indicating the nature of cardiac activity. Supplemental labels/ text markers are shown in Table 2 (figure 5c; col. 14 @ 1-14). It would have been obvious to one having ordinary skill in the art at the time of the invention to have specifically used text markers rather than markers in the Mann et al. system in order

simplify the process enabling the reader to readily understand and evaluate the cardiac data (abstract; figs. 5c, 6; col. 2 @ 31-42; col. 3 @ 16-19; col. 4 @ 23-40; col. 5 @ 34-41; col. 14 @ 1-14; col. 15 @ 15-22).

Claim Rejections - 35 USC § 103

3. Claims 10-12 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mann et al. (US 5833623) in view of Powell (US 5549654) and further in view of Stroebel (US 5861012). As discussed in paragraph 2 of this action, modified Mann et al. disclose the claimed invention except for selectively activating a means to automatically assess a pacing threshold value, add a safety margin, recommend the pacing amplitude and pulse width, and display the recommended pacing amplitude and pulse width for practitioner review.

Stroebel teaches stimulation threshold measurements using selective activation of a means to automatically assess a pacing threshold value, add a safety margin, recommend the pacing amplitude and pulse width, and display the recommended pacing amplitude and pulse width for practitioner review for the purpose of periodically updating the pacing parameters and providing the practitioner with feedback on the cardiac performance. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used using selective activation of a means to automatically assess a pacing threshold value, add a safety margin, recommend the pacing amplitude and pulse width, and display the recommended pacing amplitude and pulse width for practitioner review in the modified Mann et al. system in order more frequently define the pacing parameters to minimize the energy usage, hence optimizing battery performance and to provide the practitioner with comprehensive data to optimize the cardiac therapy (col. 3 @ 42-49; col. 4 @ 25-32; col. 5 @ 38-45; col. 8 @ 51-60;

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col. 11 @ 56-66; col. 19 @ 65 – col. 20 @ 7; col. 27 @ 16-19).

Statutory Basis

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

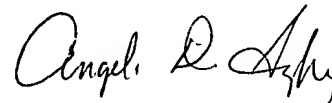
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fran Oropeza, telephone number is (571) 272-4953. The Examiner can normally be reached on Monday – Friday from 9 a.m. to 5:30 p.m.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for regular communication and for After Final communications.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

FPO
11/8/04



**ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700**